

1955

Kentucky Practice--Probate Practice and Procedure with Forms by Absolem C. Russell and James R. Merritt

Frederick W. Whiteside Jr.
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Whiteside, Frederick W. Jr. (1955) "Kentucky Practice--Probate Practice and Procedure with Forms by Absolem C. Russell and James R. Merritt," *Kentucky Law Journal*: Vol. 44 : Iss. 2 , Article 15.
Available at: <https://uknowledge.uky.edu/klj/vol44/iss2/15>

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

mythology is the scoffer," as Murray Kempton said of H. L. Mencken not long ago.) Even those who feel there is something in it may consider it in poor taste. It is furthermore precisely the line of thought which has in recent years been heavily attacked as tending to undermine our faith in our courts, and the commonest line of criticism developed against it from this point of view is that it is a kind of intellectual treason to suggest that courts can not be entirely "objective" or to suggest that political opportunism is a necessary ingredient in decision. In short, the criticisms by Professor Rodell smack of *lèse-majesté*. These attitudes were naturally anticipated by Professor Rodell who has a few Mencken-tart strictures for them,³ although needless to say they can be made much more plausible than he has made them.

All in all, it is as provoking a book as one is likely to find for some time, and very readable besides. Professor Rodell's style is utterly uninhibited, the like of which may be indicated by the broad and jazzy notes deliberately sounded now and then in this review.

Associate Professor of Law
University of Kentucky

J. J. DUKEMINIER, JR.

KENTUCKY PRACTICE—PROBATE PRACTICE AND PROCEDURE WITH FORMS, by Absolem C. Russell and James R. Merritt. St. Paul: West Publishing Co., 1955. Vol. 1, pages xxv, 575, Vol. 2, pages xxiii, 706, \$35.00.

This first comprehensive reference work on the law of Wills and Administration of Estates in the Kentucky courts by two recognized authorities in the field, Dean Russell and Professor Merritt of the University of Louisville Law School, was made available to Kentucky lawyers last Spring. It has proven to be an indispensable tool in the practice of law. As indicated by the title, this work is part of a series by West Publishing Company on Kentucky Practice and the form of presentation is directed to providing an answer to nearly every procedural problem a lawyer is likely to encounter in his practice. Yet

³ Less spleeny, but to the same point, are the words of Justice Brewer, *Governments by Injunction*, 15 NAT. CORP. REP. 849 (1898): "It is a mistake to suppose that the Supreme Court is either honored or helped by being spoken of as beyond criticism. On the contrary, the life and character of its justices should be the objects of constant watchfulness by all, and its judgments subject to the freest criticism. The time is past in the history of the world when any living man or body of men can be set on a pedestal and decorated with a halo. True, many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all." Quoted with approval by Professor, now Justice, Frankfurter, *Mr. Justice Holmes and The Constitution*, 41 HARV. L. REV. 121, 164 (1927).

the work is much more than that. Since the answer to most problems depends upon and requires a background of the substantive law, the text is primarily an orderly presentation of the basic principles of the substantive law of wills and intestate succession as well as probate and administration.

The plan of treatment is first to provide for each subject a lucid introduction and explanation of the problem and legal principles applicable in its solution. There then follows a detailed discussion of the applicable Kentucky statutes and the problems which have arisen thereunder. The citation to Kentucky decisions in the footnotes is exhaustive. Separate sections containing recommended forms are inserted throughout the text where needed.

Lawyers who have used this treatise as a tool for finding a needed authority have the highest praise for it. In one example, where the exact factual situation was hard to duplicate, the lead to the elusive case was found quickly by reading the general sections in "Probate Practice and Procedure", which cited cases which in turn led to the case in point. Though it is impossible in two volumes to categorize every factual situation which may possibly arise, by orderly categorization of the cases in the footnotes under the appropriate main principles of law the authors have immeasurably aided most brief-writers in finding the Kentucky cases they seek. The same lawyer who found his case was also enabled to draft his pleadings and instructions for the court by carefully referring to the text.

To illustrate the plan of arrangement, certain portions this writer had occasion to examine may be described. In examining the rights of an adopted child with and without a will, one finds Section 14 on the rights of adopted children under the laws of intestate descent and distribution, Section 547 on their rights under various designations of beneficiaries under a will, such as "heirs", "children" and "issue", and Section 417 on the extent to which an adoption operates as a revocation of a previously executed will. General information as to the Kentucky statute on the effect of afterborn children on a previously executed will is found in Section 417 in the Chapter on Revocation. And on a more specific point, what constitutes provision for or mention of an afterborn child sufficient to show an intention to exclude him, the text provides the lead to the few Kentucky cases on the point.

No major point or area of the law has been overlooked. Usually the treatment is limited to the extent that there are Kentucky authorities in point, but on occasion the authors have gone further and expressed an opinion when the cases have inadequately discussed a point or by their silence have left the law open (see, for example, Section

1308, dealing with the right of a beneficiary to accept one of two gifts under a will and reject the other). There are numerous helpful references to notes and articles in the Kentucky Law Journal and other periodicals, but references to legal literature other than statutes and decisions is generally selective rather than exhaustive.

On the statistical side, this treatise consists of two handsomely bound volumes with 34 chapters and 1396 sections, together with an Appendix containing pertinent provisions of the Kentucky Constitution and Revised Statutes. The Index and Table of Cases each are more than 100 pages in length, a fact which obviously renders the text more usable. The forms are interspersed throughout the text. Thus, one looking for the form finds without further looking an explanation and the legal principles back of it. Pocket part supplements are provided, and unused section numbers have been reserved for supplementary material, which in a field as broad as wills is certain to arise on future revision.

F. W. WHITESIDE, JR.

University of Kentucky